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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,012	10/05/1999	ALBERT K. CHIN	4496	1400

7590

03/06/2006

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EXAMINER

NGUYEN, VI X

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/413,012

Applicant(s)

CHIN, ALBERT K.

Examiner

Victor X. Nguyen

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-51 is/are allowed.
- 6) ☒ Claim(s) 52,53,55-63 and 65-71 is/are rejected.
- 7) ☒ Claim(s) 54 and 64 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The request filed on 11/7/2005 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/413,012 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 52-53, 55-63 and 65-71 are rejected under 35 U.S.C. 102 (b) as being anticipated by Klein et al (U.S. 5,279,565).

Klein et al show a tissue dissector (figures 1-2, 3b) having the limitations as recited in the above listed claims, including: an elongated cannula (20), a distal tip has a tapered outer walls converting to a blunt end (at 26), a solid dilating element (52,54) disposes on the cannula, where the dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal tip, and where element 52,54 is capable of removably mounted on the cannula, where the device further comprises a mating slot (56) for removably positioning the dilating element on the cannula, and where the device further has an endoscope (38) sized to fit within a lumen of the cannula, and the distal tip is capable of being dissected with the endoscope, where the dilating

Art Unit: 3731

element is an oval shape, and where the cross sectional dimension of the dilating element can be two times larger than the cross sectional dimension of the distal end of the cannula (fig.2), where the dilating element can be compressible. Note that the procedure in figure 2 discloses a spacer length of cannula(the length between element 52 and 56 is considered a spacer length) of between 14-28 mm disposed between a distal end of the dilating element and a proximal end of the distal tip

Claim 52 is rejected under 35 U.S.C. 102 (e) as being anticipated by Andrese (U.S. 6,015,423).

Andrese discloses a tissue dissector (figures 1-2) having the limitations as recited in the above listed claims, including: an elongated cannula (11), a distal tip (11a) has a tapered outer walls converting to a blunt end, a solid dilating element (14) disposed on the cannula, where the dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal tip

Allowable Subject Matter

3. Claims 34-51 are allowed.

Claims 54 and 64 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose or suggest a tissue dissector comprising a distal tip having tapered outer walls converging to a blunt

Art Unit: 3731

end, where a length of screw threads positioned on an outer surface of a cannula through tissue, where a dilating element disposed on the cannula proximal to the distal tip, the dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal end of the cannula and greater than the cross sectional dimension of the distal tip, and where the dilating element further comprises a threaded bore hole formed in the dilating element for engaging the length of screw threads on the cannula for removably positioning the dilating element on the cannula. **As to claim 43**, the prior art does not teach the invention including, inter alia, a tissue dissector kit having a cannula and a tapered distal tissue dissecting tip disposed on a distal end. The cannula incorporates a locking mechanism proximal to the distal tip to which a mating lock of each of a plurality of dilating element attaches. Each different dilating element has a cross sectional dimension greater than the cross sectional dimension of the distal end of the cannula and the distal tip, and where different dilating elements mounted one at a time on the cannula and formed cavities of differing dimensions.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

4. Applicant's arguments filed 11/7/2005 have been fully considered but they are not persuasive. Applicant is asked to please refer to the modified prior art rejection above where examiner addresses applicant's concerns regarding prior art rejection.

Conclusion


Art Unit: 3731

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn 
1/16/2006



JULIAN W. WOO
PRIMARY EXAMINER